



Oregon

Kate Brown, Governor

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MEMORANDUM

TO: Water Resources Commission

FROM: Ivan Gall, Field Services Division Administrator *IG*

SUBJECT: Agenda Item B, June 14, 2018
Water Resources Commission Meeting

Klamath Basin Update

I. Introduction

During this agenda item, Department staff will update the Commission on Klamath Basin water issues. These include regulation of surface water and groundwater, preference for uses of water for human consumption and stock water, emergency drought groundwater permits, water conditions within the U.S. Bureau of Reclamation project area, and a recently released principles document from the U.S. Department of Interior.

II. Background

The Klamath Basin Adjudication began in 1975. The Department received 730 claims and 5,660 contests to those claims. In 2013, the Department issued its Findings of Fact and Final Order of Determination and referred the case to the Klamath County Circuit Court. Once the administrative phase of the adjudication is complete, the statutes require the Department to manage the basin according to the doctrine of prior appropriation while the adjudication proceeds through the Klamath County Circuit Court.

There are more demands for water in the Klamath Basin than water to meet the needs. In recognition of the water challenges in the basin, including several conflicts in the early 2000s, efforts were made to find solutions to the water and fish issues in the basin. The Klamath Basin Restoration Agreement (KBRA) was signed in 2010, and was intended to: (i) restore and sustain natural fish production and provide for full participation in ocean and river harvest opportunities of fish species throughout the Klamath Basin; (ii) establish reliable water and power supplies which sustain agricultural uses, communities, and National Wildlife Refuges; and (iii) contribute to the public welfare and the sustainability of all Klamath Basin communities.

Subsequent negotiations in the off-project area of the basin resulted in an agreement in early 2014. The 2014 Upper Klamath Basin Comprehensive Agreement (UKBCA) sought to: (i) support the economic development interests of the Klamath Tribes; (ii) provide a stable, sustainable basis for the continuation of agriculture in the Upper Klamath Basin; (iii) manage and restore riparian corridors along streams that flow into Upper Klamath Lake in order to achieve proper functioning conditions permanently; and (iv) resolve controversies regarding certain water right claims and contests in the Oregon Klamath Basin Adjudication.

Both agreements are no longer in effect. Congressional approval and funding was not obtained within the timeframes set in the KBRA, leading it to expire in December 31, 2015. On December 28, 2017, the Secretary of the Interior published a “Negative Notice” terminating the UKBCA finding that all of its conditions could not be achieved.

Water conditions for the 2018 season have been below average in the Klamath Basin, with total precipitation about 80 percent of average. On March 13, 2018, following a request from the Klamath County Commissioners, Governor Brown declared a drought emergency in Klamath County under Executive Order No. 18-02.

III. Regulation Update

On March 8, 2018, The Klamath Tribes placed a call for enforcement of the determined Tribal instream claims. The Bureau of Indian Affairs concurred with the call on March 9, 2018. Watermaster staff in the Klamath Basin monitored water use and measured stream flows into early April. Water use at that time was low due to cool temperatures and a series of storms.

The Tribal call was validated on the Lower Williamson River on April 17, 2018. The call for the Lower Sprague River was validated on April 18 and regulation orders were mailed to junior water rights on April 26-27. Water rights junior to 1864 on Fort Creek, a tributary to the Wood River, were also sent regulation orders on April 26 following validation of that call. Regulation updates are posted online at https://apps.wrd.state.or.us/apps/misc/dsb_area_status/Default.aspx?wm_district=17.

The Commission adopted administrative rules in 2015 (OAR 690-025, “Division 25”) which provided guidance for regulation of wells that interfere with senior surface water rights in the “off project area”, generally above Klamath Lake. The Division 25 rules state that if the UKBCA terminates, groundwater regulation in the Off-Project area of the Klamath Basin will be in accordance with OAR 690-009 (“Division 9”). Since negative notice on the UKBCA was published December 28, 2017, the Groundwater Section in early 2018 began evaluating which wells could be subject to regulation under the Division 9 rules. The methodology was documented in an April 26, 2018 technical memorandum and posted online. Under the Division 25 rules, approximately 57 wells could be subject to regulation, depending on where and when a call for water was made, whereas under the Division 9 rules up to 140 wells could be subject to regulation.

IV. U.S. Bureau of Reclamation Project Area Update

The U.S. Bureau of Reclamation’s (BOR) Klamath Basin Project contracts with multiple irrigation districts to provide water to approximately 200,000 acres of cropland in Oregon and northern California. Historically, the Project was able to satisfy the irrigation water demand in most years. Beginning in 2001, some of the water was released for flows down the Klamath River and to maintain Upper Klamath Lake levels to protect threatened and endangered species in the river and the lake.

In 2018, BOR is operating the Project under a 2013 Biological Opinion and a 2017 Northern California District Court injunction. The injunction requires BOR to release certain amounts of water from Upper Klamath Lake, and to retain up to 50,000 acre feet of water for future release. The BOR began releasing water to meet requirements in the Court injunction on May 7 and continued releases for approximately 15 days, which reduced water available to the Project irrigators. As a result, Project irrigators began using groundwater in late April under supplemental groundwater rights and emergency drought permits. Supplemental groundwater permits in the Project area total over 41,000 acres.

V. Emergency Drought Groundwater Permits

During a Governor's declared drought, ORS 536.750(a) allows the Department to issue temporary permits for emergency use of water. This tool has been used by Project irrigators in prior years with declared droughts to make up for shortfalls in surface water deliveries. As of May 24, 2018, the Department has issued 30 drought groundwater permits for 9,350 acres in the Project area, with two applications being denied and two more pending. All drought permits issued in 2018 have been limited to one acre foot per acre due to declining groundwater levels in this part of the basin, and all drought permits will expire at the end of the calendar year.

VI. Drought Preference Update

Under ORS 536.750(1)(c), the Commission may grant a preference of use for water for stock and human consumption, while a Governor's drought declaration is in effect. On April 13, 2018, the Water Resources Commission adopted temporary administrative rules (OAR 690-022) granting water rights preferences for uses of water for human consumption in Klamath County and stock water in the Williamson River Basin. These rules became effective on April 17, 2018, and remain in effect through October 13, 2018. The Department anticipates that there will be a need to exercise the human consumption preference beyond the sunset of the temporary rules. Staff are working to identify options for addressing their needs.

As of May 21, 2018, two requests for water for human consumption (City of Chiloquin and Bly) have been received, and six requests for stock water have been received. The watermaster staff in District 17 will conduct site inspections to ensure compliance with the rules.

VII. U.S. Department of Interior Principles Document

While both the KBRA and UKBCA have been terminated, all of the water and fish issues still remain. The U.S. Department of Interior is currently leading an effort to determine if there is local interest to negotiate long-term solutions to the Klamath Basin issues. The Department of Interior recently distributed a draft principles document (Attachment 1) for potential

Klamath Basin resource management discussions to help focus and assess the level of local interest. The States of Oregon and California, along with members of Congress, are working closely with Interior on this effort.

VIII. Conclusion

The Department will continue working with water users in the basin to protect senior water rights and evaluate options for water users to cope with regulation or drought-related shortages.

Attachments

1. Draft Principles Document from Department of Interior

Ivan Gall
503-986-0847

Draft Principles for Potential Klamath Basin Resource Management Discussions

May 2, 2018

Introduction

A number of Tribes, organizations and individuals have expressed interest in pursuing discussions to address sustainable resource management in the Klamath Basin.¹ The purpose of this document is to solicit feedback, in broad-based Tribal and stakeholder discussions, on feasible, effective, and sustainable ways to achieve these goals and principles.

Goals

A Klamath Basin-wide process should address sustainable resource management regarding fish and water, including water quality, agriculture, wildlife, and recreation by identifying actions that the local communities are able to implement and maintain into the future. This is not intended to be a federally driven process, however, it is recognized that federal participation is essential because of the current level of federal influence over resource management, Tribal trust obligations and contractual obligations to water users in the Klamath Project. Funding, while important, should be secondary to identifying sustainable resource management goals on which local communities can agree.

Principles

- Provide for self-sustaining fish populations that will lead to delisting of ESA listed species and harvestable levels for Tribes and will support commercial, subsistence, and sport fisheries.
- Provide for sustainable agriculture and other uses that reduce crisis management.
- Provide a sustainable economy for communities in the basin that are dependent on fish and agriculture.
- Provide a regulatory structure that assists, rather than impedes, implementation of the above principles.
- Provide federal authorization and funding to the extent necessary to address the agreed to principles.
- Sources of non-federal funding should be identified as needed.

While implementation of the above principles should not be constrained by current federal or state authorities, the discussions should clearly identify what can be accomplished with current federal and state authority and where additional authority is needed.

¹ A number of these organizations and individuals are parties to existing agreements that include commitments to pursue Basin-wide discussions.

Alan Mikkelsen plans to meet with Tribes and stakeholders the week of June 11th. It would be helpful to have your comments prior to those meetings; if that is not possible, please send them by Friday, June 15, 2018. Please send comments to Ed Sheets, at ed@edsheets.com and Alex Sterhan, at asterhan@usbr.gov.

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